

RECEIVED
U.S.D.C. CLERK, CHARLESTON, S.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

2008 SEP 18 P 3:11

| | | |
|------------------------------------|---|--------------------------|
| Allie M. James, |) | |
| |) | C/A No.: 0:07-0749-MBS |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | OPINION AND ORDER |
| Michael J. Astrue, Commissioner of |) | |
| Social Security, |) | |
| |) | |
| Defendant. |) | |
| |) | |

Plaintiff Allie M. James filed an application for a period of disability and disability insurance benefits on April 28, 2004, alleging disability commencing April 30, 2003 because of back problems and migraine headaches. The application was denied initially and upon reconsideration. Plaintiff requested a hearing before an administrative law judge ("ALJ"). The ALJ held a hearing on February 2, 2005. On February 16, 2006, the ALJ issued a decision that Plaintiff was not entitled to a period of disability or disability insurance benefits under sections 216(i) and 223(d), respectively, of the Social Security Act. On January 12, 2007, the Appeals Council determined that there was no basis for granting Plaintiff's request for review. Plaintiff thereafter brought the within action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the "final decision" of the Commissioner.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge George C. Kosko for a Report and Recommendation. On August 28, 2008, the Magistrate Judge filed a Report and Recommendation in which he determined that the ALJ failed to properly assess Plaintiff's subjective complaints of pain. The Magistrate Judge recommended that the Commissioner's decision be vacated and the case remanded for the ALJ to

properly analyze Plaintiff's subjective complaints of pain. The Magistrate Judge further recommended that the ALJ clarify his treatment of the medical opinions of Drs. Harold Nicolette, a treating physician, and Robert E. Brabham, an examining physician. No party filed objections to the Report and Recommendation. On September 15, 2008, the Commissioner filed a notice that he would not file objections to the Report and Recommendation.

The court is charged with making a *de novo* determination of any portions of the Report of Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After a thorough review of the Report and the record in this case, the court adopts the Report and Recommendation and incorporates it herein by reference. Accordingly,

It is ORDERED that the Commissioner's decision be vacated and the case remanded for proceedings consistent with this order and the Report and Recommendation.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

September 18, 2008.